

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE**

ROCKY T. HOPKINS,

Plaintiff,

v.

CAUSE NO.: 4:17-CV-36-TLS-JEM

ANDREW M. SAUL, Commissioner of the
Social Security Administration,

Defendant.

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Attorney's Motion for an Award of Attorney's Fees Under 42 U.S.C. § 406(b) [ECF No. 26], filed on February 11, 2020. For the reasons stated below, the request is GRANTED.

BACKGROUND

On May 4, 2017, the Plaintiff filed a Complaint [ECF No. 1] in which he sought "to review a decision of the Social Security Commissioner denying plaintiff's application for Social Security benefits for lack of disability." Compl. ¶ 1, ECF No. 1. On December 5, 2018, the Court reversed the Commissioner's decision and remanded for further proceedings. Op. & Order, p. 21, ECF No. 18. Thereafter, the Court granted the Plaintiff's request for \$3,486.50 in fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. *See* Order, ECF No. 25.

On January 13, 2020, the Commissioner determined that the Plaintiff was eligible for past due benefits in the amount of \$67,283.62. *See* Ex. D, Explanatory Letter, ECF No. 27-4; *see also* Ex. B, Notice of Decision, p. 5, ECF No. 27-2. The Plaintiff had previously agreed to pay his attorney as follows:

I agree that if any of my claim(s) progress to the U.S. Courts and is then favorably decided, then my attorney may elect to motion the U.S. Courts to approve a fee of 25% of all past due benefits without limitation pursuant to 42 U.S.C. section 406(b) for the work done before the U.S. Courts.

Ex. A, Fee Agreement, p. 1, ECF No. 27-1.

In the instant motion, Attorney Matthew Richter seeks \$16,820.90 in attorney fees.¹ *See* Pl.'s Mem. in Supp. of Mot. for an Award of Attorney's Fees under 42 U.S.C. § 406(b), p. 1, ECF No. 27. Counsel states that the requested amount is consistent with the above-mentioned fee agreement. *Id.* at 4. Counsel argues that the requested fees are reasonable given the contingent nature of the representation and the results he obtained for his client. *Id.* at 4–5. Counsel avers that his office extended 12.9 hours of attorney time and 11 hours of staff time during the course of the litigation. *Id.* at 5 (citing Ex. E, Time Log, ECF No. 27-5). Counsel indicates that he will refund the previously awarded EAJA fees. *Id.* at 6. The Defendant did not object to the request for attorney fees. *See* Response, ECF No. 28.

ANALYSIS

Counsel, subject to refunding \$3,486.50 in EAJA Fees, requests \$16,820.90 in attorney fees pursuant to 42 U.S.C § 406(b). For the reasons stated below, this request is granted.

“The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b).” *Hoover v. Saul*, No. 1:16-CV-427, 2019 WL 3283047, at *1 (N.D. Ind. July 22, 2019) (citing *Culberston v. Berryhill*, 139 S. Ct. 517, 520 (2019)). “Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented

¹ Counsel actually requests \$16,820.91 in attorney fees. However, the requested amount is one penny over the twenty-five percent cap on attorney fees. *See* 42 U.S.C. § 406(b)(1)(A) (“the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment . . .”). The Court will construe counsel’s request so as to comply with this requirement.

the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled.” *Hoover*, 2019 WL 3283047, at *1. “The reasonableness analysis considers the ‘character of the representation and the results achieved.’” *Id.* at *4 (citing *Gisbrecht v. Barnhardt*, 535 U.S. 789, 807 (2002)). Reasons to reduce an award include an attorney’s unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Gisbrecht*, 535 U.S. at 807. Likewise, “an award of EAJA fees under 42 U.S.C. § 2412 offsets an award under § 406(b).” *Hoover*, 2019 WL 3283047, at *1 (citing *Gisbrecht*, 535 U.S. at 796).

The Court finds that \$16,820.90 in attorney fees is consistent with the relevant fee agreement. *See* Fee Agreement, p. 1, ECF No. 27-1. Additionally, this amount is reasonable. Counsel indicates that his office spent extended 12.9 hours of attorney time and 11 hours of staff time during the course of the litigation. *See* Ex. E, Time Log, ECF No. 27-5. In the aggregate, this results in an effective hourly rate of \$703.80. This effective hourly rate is comparable to fees which have been approved in similar cases. *See, e.g., Hoover*, 2019 WL 3283047, at *4 (effective hourly rate of \$800); *Hill v. Comm’r of Soc. Sec.*, No. 1:11-CV-134, 2016 WL 2643360, at *4 (N.D. Ind. May 10, 2016) (effective hourly rate of \$810); *Bianco v. Colvin*, No. 3:14-CV-98, 2016 WL 1295926, at *3 (N.D. Ind. Apr. 4, 2016) (effective hourly rate of \$825). The Court also emphasizes that the attorney wrote a well-reasoned Opening Brief [ECF No. 11] and Reply Brief [ECF No. 15] which ultimately resulted in an award of past due benefits in the amount of \$67,283.62. Counsel’s request for fees is certainly reasonable given the contingent nature of this case and the results achieved for his client. *See Martinez v. Astrue*, 630 F.3d 693, 695 (7th Cir. 2011). Thus, the Court grants the request for attorney fees.

CONCLUSION

For the reasons stated above, the Plaintiff's Attorney's Motion for an Award of Attorney's Fees Under 42 U.S.C. § 406(b) [ECF No. 26] is GRANTED. The Court AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$16,820.90. The Court ORDERS the Plaintiff's attorney to refund the \$3,486.50 in EAJA fees previously awarded in this case.

SO ORDERED on May 13, 2020.

s/ Theresa L. Springmann

CHIEF JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT